

Senate Bill No. 521

CHAPTER 300

An act to amend Sections 309.5 and 1802 of, and to add Section 1802.3 to, the Public Utilities Code, relating to public utilities.

[Approved by Governor September 3, 2003. Filed
with Secretary of State September 4, 2003.]

LEGISLATIVE COUNSEL'S DIGEST

SB 521, Bowen. Public Utilities Commission: customers.

(1) Existing law creates a division within the Public Utilities Commission to represent the interests of public utility customers and subscribers within the jurisdiction of the commission.

This bill would provide that for revenue allocation and rate design matters, the division would be required to primarily consider the interests of residential and small commercial customers.

(2) Existing law provides compensation for reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs to public utility customers for participation or intervention in any proceeding of the commission. Existing law defines "customer" in part to include any representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential electrical, gas, telephone, telegraph, or water corporation customers.

This bill would also include within the definition of "customer" any representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of small commercial customers, as defined by a certain peak demand threshold, who receive bundled electric service from an electrical corporation. The bill would prohibit a representative of a group representing the interests of small commercial customers who receive bundled electric service from an electrical corporation from being eligible for an award of compensation if the representative has a conflict arising from prior representation before the commission. The bill would authorize the commission to modify or change the definition of "small commercial customer," to promote participation in commission proceedings by organizations representing small businesses.

The people of the State of California do enact as follows:

SECTION 1. Section 309.5 of the Public Utilities Code is amended to read:

309.5. (a) There is within the commission a division to represent the interests of public utility customers and subscribers within the jurisdiction of the commission. The goal of the division shall be to obtain the lowest possible rate for service consistent with reliable and safe service levels. For revenue allocation and rate design matters, the division shall primarily consider the interests of residential and small commercial customers. The amendments made to this section by Chapter 440 of the Statutes of 2001 are not intended to expand the representation and responsibilities of the division.

(b) The director of the division shall be appointed by and serve at the pleasure of the Governor, subject to confirmation by the Senate. The director shall annually appear before the appropriate policy committees of the Assembly and the Senate to report on the activities of the division.

(c) The commission shall, by rule or order, provide for the assignment of personnel to, and the functioning of, the division. The division may employ experts necessary to carry out its functions. Personnel and resources shall be provided to the division at a level sufficient to ensure that customer and subscriber interests are fairly represented in all significant proceedings.

(d) The commission shall develop appropriate procedures to ensure that the existence of the division does not create a conflict of roles for any employee or his or her representative. The procedures shall include, but shall not be limited to, the development of a code of conduct and procedures for ensuring that advocates and their representatives on a particular case or proceeding are not advising decisionmakers on the same case or proceeding.

(e) The division may compel the production or disclosure of any information it deems necessary to perform its duties from entities regulated by the commission provided that any objections to any request for information shall be decided in writing by the assigned commissioner or by the president of the commission if there is no assigned commissioner.

(f) There is hereby created the Public Utilities Commission Ratepayer Advocate Account in the General Fund. Moneys from the Public Utilities Commission Utilities Reimbursement Account in the General Fund shall be transferred in the annual Budget Act to the Public Utilities Commission Ratepayer Advocate Account. The funds in the Public Utilities Commission Ratepayer Advocate Account shall be utilized exclusively by the division in the performance of its duties. The commission shall annually submit a staffing report containing a comparison of the staffing levels for each five-year period.

(g) On or before January 10 of each year, the commission shall provide to the chairperson of the fiscal committee of each house of the



Legislature and to the Joint Legislative Budget Committee all of the following information:

(1) The number of personnel years assigned to the Office of Ratepayer Advocates.

(2) The total dollars expended by the Office of Ratepayer Advocates in the prior year, the estimated total dollars expended in the current year, and the total dollars proposed for appropriation in the following budget year.

(3) Workload standards and measures for the Office of Ratepayer Advocates.

(h) The division shall agree to meet and confer in an informal setting with a regulated entity prior to issuing a report or pleading to the commission regarding alleged misconduct, or a violation of a law or a commission rule or order, raised by the division in a complaint. The meet and confer process shall be utilized as an informal means of attempting to reach resolution or consensus on issues raised by the division regarding any regulated entity in the complaint proceeding.

SEC. 2. Section 1802 of the Public Utilities Code is amended to read:

1802. As used in this article:

(a) “Compensation” means payment for all or part, as determined by the commission, of reasonable advocate’s fees, reasonable expert witness fees, and other reasonable costs of preparation for and participation in a proceeding, and includes the fees and costs of obtaining an award under this article and of obtaining judicial review, if any.

(b) (1) “Customer” means any of the following:

(A) A participant representing consumers, customers, or subscribers of any electrical, gas, telephone, telegraph, or water corporation that is subject to the jurisdiction of the commission.

(B) A representative who has been authorized by a customer.

(C) A representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers, or to represent small commercial customers who receive bundled electric service from an electrical corporation.

(2) “Customer” does not include any state, federal, or local government agency, any publicly owned public utility, or any entity that, in the commission’s opinion, was established or formed by a local government entity for the purpose of participating in a commission proceeding.

(c) “Expert witness fees” means recorded or billed costs incurred by a customer for an expert witness.



(d) “Other reasonable costs” means reasonable out-of-pocket expenses directly incurred by a customer that are directly related to the contentions or recommendations made by the customer that resulted in a substantial contribution.

(e) “Party” means any interested party, respondent public utility, or commission staff in a hearing or proceeding.

(f) “Proceeding” means an application, complaint, or investigation, rulemaking, alternative dispute resolution procedures in lieu of formal proceedings as may be sponsored or endorsed by the commission, or other formal proceeding before the commission.

(g) “Significant financial hardship” means either that the customer cannot afford, without undue hardship, to pay the costs of effective participation, including advocate’s fees, expert witness fees, and other reasonable costs of participation, or that, in the case of a group or organization, the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding.

(h) “Small commercial customer” means any nonresidential customer with a maximum peak demand of less than 50 kilowatts. The commission may establish rules to modify or change the definition of “small commercial customer,” including use of criteria other than a peak demand threshold, if the commission determines that the modification or change will promote participation in proceedings at the commission by organizations representing small businesses, without incorporating large commercial and industrial customers.

(i) “Substantial contribution” means that, in the judgment of the commission, the customer’s presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer’s participation has resulted in a substantial contribution, even if the decision adopts that customer’s contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate’s fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation.

SEC. 3. Section 1802.3 is added to the Public Utilities Code, to read:

1802.3. A representative of a group representing the interests of small commercial customers who receive bundled electric service from an electrical corporation shall not be eligible for an award of compensation pursuant to this article if the representative has a conflict arising from prior representation before the commission. This conflict may not be waived.



SEC. 4. The Legislature finds and declares all of the following:

(a) The intervenor compensation program allows for participation by organizations representing small businesses so that those businesses have a voice at the commission.

(b) The commission will evaluate and may revise the 50 kilowatt peak demand threshold, if doing so will further the purposes of the act adding this section.

(c) If the commission revises the threshold for a small commercial customer, it may consider criteria other than electricity demand, including number of employees.

(d) When the commission evaluates implementation of this expanded program, the commission should ensure that large commercial and industrial customers are not inadvertently included in the program.

(e) The act adding this section does not alter the commission's implementation of the requirement of intervenor compensation that may be granted only if the participation resulted in a substantial contribution to the proceeding, and only if intervention without an award of fees or costs imposes a significant financial hardship.

